STATE OF MICHIGAN

COURT OF APPEALS

ROBERT KHANOLKAR,

Plaintiff-Appellant,

V

LAKESIDE BIKE RENTAL, INC., and ARNOLD TRANSIT COMPANY,

Defendants-Appellees.

UNPUBLISHED
March 21, 2006

No. 258338
Mackinac Circuit Court
LC No. 03-005678-NO

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff was injured when the chain came off of a rented bicycle he was riding, causing him to fall. At issue is the validity of a release of liability form that plaintiff signed prior to renting the bicycle from defendants' bike rental facility. The trial court held that plaintiff's negligence action was barred by the release and granted summary disposition in favor of defendants on that basis. Plaintiff appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff rented bicycles for himself and five friends from defendants' bike rental business. Four documents, all on a clipboard, were presented for signature to plaintiff by defendants' agent. The agent flipped through each document in turn, directing plaintiff to "sign here." One of the documents that plaintiff signed, which was beneath two other, smaller documents, was entitled "RELEASE AND ACCEPTANCE OF RESPONSIBILITY AND ACKNOWLEDGEMENT OF RISKS." This document purported to, *inter alia*, release defendants from "any and all liability, claims, demands, actions or rights of action, which are related to or are in any way connected with" the bicycle rental, "including . . . the negligent acts or omissions" of defendants or its employees. The release document comprised four sections, each labeled with headings in all capital letters: "ACKNOWLEDGEMENT OF RISKS," "ACCEPTANCE OF RISK AND RESPONSIBILITY," "RELEASE," and "EFFECT OF THIS RELEASE AGREEMENT." Immediately above plaintiff's signature was the following statement: "My signature below indicates that I have read this entire document, understand it completely, and agree to be bound by its terms." Plaintiff testified at his deposition that he did not see the release document or know that he was signing a release; he "assumed" that he was signing a "rental agreement." Plaintiff further testified that he did not attempt to read the documents; that defendants' agent did not try to trick him or to obscure the pages; and that all of

the printing on the release form would have been in full view and available to him to read had he chosen to do so.

The trial court did not state the subsection under which it granted summary disposition.[1] Because the parties submitted documentary evidence upon which the trial court relied, this Court treats the case as if the court granted summary disposition under MCR 2.116(C)(10). *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988); *Coblentz v City of Novi*, 264 Mich App 450, 453 n 1; 691 NW2d 22 (2004).

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v City of Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind, supra* at 238; *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).

Plaintiff contends that the release may not be enforced because he did not read its contents and "assumed" that that it was simply a "rental agreement." However, a party signing an agreement is deemed to know its contents, and may not claim ignorance to avoid the instrument. *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 92; 468 NW2d 845 (1991); *Cleaver v Traders' Ins Co*, 65 Mich 527, 533; 32 NW 660 (1887). Absent fraud or mutual mistake, a party who signs a contract cannot seek to invalidate it on the ground that he failed to read it or thought that its terms were different. *Paterek v 6600 Ltd*, 186 Mich App 445, 450; 465 NW2d 342 (1990). Plaintiff concedes that fraud and mistake are not present in this case. Moreover, while plaintiff asserts that he did not know what he was signing, the trial court noted that "within a half inch" of plaintiff's signature appeared the contractual acknowledgement that he had read the entire document, understood it completely, and agreed to be bound by its terms.

Furthermore, contrary to plaintiff's suggestion otherwise, it is not contrary to the public policy of this state for a party to contract against liability for damages caused by its own ordinary negligence. *Skotak v Vic Tanny Int'l*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994); *Dombrowski v City of Omer*, 199 Mich App 705, 709; 502 NW2d 707 (1993); see also *St Paul Fire & Marine Ins Co v Guardian Alarm Co of Michigan*, 115 Mich App 278, 283; 320 NW2d 244 (1982). As with other contractual provisions, the scope of a release is governed by the intent of the parties as expressly stated in the release itself. *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997); *Dombrowski, supra* at 709; *Rodriguez v Solar of Mich, Inc*, 191 Mich App 483, 496; 478 NW2d 914 (1991).

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[1] Defendants sought summary disposition on the basis of the release under MCR 2.116(C)(7), (8), and (10).

Finally, plaintiff argues that we should apply to defendants' waiver the "conspicuity" requirement contained in § 2-316(2) of Michigan's Uniform Commercial Code, MCL 440.2101 *et seq*.[2] However, Article 2 of the UCC applies only to contracts for the sale of goods, MCL 440.2102; 440.2106(1), and therefore does not apply to the bicycle rental transaction at issue in this case.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

[2] MCL 440.2316(2) provides generally that "to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous."